IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2176 OF 1992

Jagannath Ganpat Purav,)
of Bombay Indian Inhabitant,)
residing at Purav House,)
Behind Alka Bldg.,)
Adarsh Dugdhalaya Naka, Marve Road,)
Malad (W), Bombay -, 400 064.).. Petitioner

Versus

1. The Maharashtra State)
Electricity Board, duly)
established under the)
Electricity (Supply) Act 1948,)
and having its office at)
Hong Kong Bank Bldg.,)
3rd Floor, Mahatma Gandhi Road,)
Fort, Bombay - 400 023.)

2. Reliance Energy Limited,)
a Company incorporated under)
the provisions of Companies)
Act 1986, and having its)
office at Reliance House,)
Santacruz (East), Mumbai.)

3. The American Springs and)
Processing Works Ltd.,)
a Public Limited Company)
incorporated and registered)
under the provisions of the)
Companies Act 1956 and having)
its registered office at)
Adarsh Housing Society,)
Cross Road No.1, Malad (W),)
Bombay - 400 064.)

4(A) Hiten Chandrakant Patel,)
of Mumbai Indian Inhabitant,)
having his address at)
C/o. Janata Machanical &)
Waives Limited,
Ramchandra Line, Malad (West),)
Mumbai - 400 064.)

5. Smt.Sonabai Ganpat Purav)
of Bombay Indian Inhabitant,)
residing at Purav House,)
Behind Alka Bldg.,)
Adarsh Dugdhalay Naka,)
Malad (West), Marve Road,)
Bombay - 400 064.)

6. Dilip Janardhan Purav,)
of Bombay Indian Inhabitant,)
residing Near Barreto Bus Stop,)
Malad Linking Road,)
Malad (W), Bombay - 400 064.)

7. Vijay Ganpat Purav,)
of Bombay, Indian Inhabitant,)
residing at Ashok Nagar,)
Behind Magal Store,)
Sawant Wadi, Kandivali (E),)
Bombay - 400 101.)

8. Ramesh Ganpat Purav,)
of Bombay Indian Inhabitant,)
residing at Purav House,)
Behind Alka Bldg.,)
Adarsh Dugdhalay Naka,)
Malad, Marve Road,)
Bombay - 400 064.)

9. Mrs.Shakuntala Bharat Darne)
of Bombay Indian Inhabitant,)
residing at Purav House,)
Behind Alka Bldg.,)
Adarsh Dugdhalay Naka,)
Malad, Marve Road,)
Bombay - 400 064.)

10. Smt.Tara Bhagwant Paralkar,)
Dindoshi Rahivasi Mandal,)
Pathan Wadi, Behind Dindoshi)
Depot., Malad (E),)
Bombay - 400 097.)

11. Smt.Vatsala Krishnarao Kotwal,)
Parel Village,)
Padmavati Building, Bombay.)

12. Smt.Yamuna Sitaram Bhatte,)
Malad, Somwari Bazar,)
Mahant Galli, Shahi Chaya)
Building, Malad (W),)

Bombay - 400 064.).. Respondents

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Shri Deepak Chitnis with Ms S.S.Chipriyar for the petitioner.

Shri Bharat Zaveri for the respondent Nos.3 and 4.

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CORAM : R.M.S.KHANDEPARKAR &
V.M.KANADE, JJ.

DATED : 23RD AUGUST, 2005.

ORAL JUDGMENT : (Per V.M.Kanade, J)

1. Heard learned counsel for the petitioner and respondent Nos.3 and 4. None present for rest of the respondents, though served.

2. By this petition, the petitioner is seeking a writ of mandamus or direction under Article 226 of the Constitution of India directing the respondent No.2 to supply electricity to the petitioner.

3. The petitioner is the owner of the plot of land bearing Survey No.17, Hissa No.2 (Part), CTS No.558/1,2,3,4, Municipal No.P/4491, 185 Valnai including the shed admeasuring 500 sq.yards. It is the contention of the petitioner that he is residing

with his family at the aforesaid address for last 70 years. The grievance of the petitioner is that respondent No.2, viz. Reliance Energy Limited, a company incorporated under the provisions of Companies Act, 1986, has withheld the supply of electricity to the petitioner at the instance of respondent Nos.3 and 4. It is the contention of the petitioner that respondent No.3, who is the adjoining land owner, had given an access through his land to the petitioner and which was confirmed by him in the consent decree dated 21st March, 1986 passed by the City Civil Court in B.C.C.C.Suit No.3687 of 1978. It is the contention of the petitioner that though the access has been given by respondent No.3 to the petitioner, at the time when respondent No.2 came the to property of the petitioner for the purpose of supplying electricity, respondent No.3 obstructed respondent No.2 from laying down the electricity cables from his land through which access was given by him to the petitioner. The petitioner has therefore filed this petition seeking the aforesaid reliefs.

4. It is contended by learned counsel for the petitioner that respondent No.2 is a licensee of respondent No.1 i.e. Maharashtra State Electricity Board, which is duly established under the Electricity

(Supply) Act, 1948, and therefore, is a licensee within the meaning of Section 2(h) of the Indian Electricity Act, 1910 and is responsible to supply the electricity to the area in which the petitioner is residing. He has submitted that Section 12 of the said Act further imposes an obligation on the licensee to supply electricity to the consumer and upon a conjoint reading of the aforesaid two sections, it is clear that the provision imposes an obligation which is public in nature and that the respondent No.2 is required to supply electricity to the petitioner who is a consumer within the meaning of the said Act. It was submitted that the petitioner was a lawful occupant of the said premises and being a lawful occupant, he was entitled to the supply of electricity. He submitted that electricity had been supplied to the occupants of the adjoining plots. Learned counsel appearing on behalf of the petitioner submitted that the obligation cast on the respondent No.2 was a statutory obligation, and therefore, though it was a private limited company registered under the Companies Act, by virtue of the statutory and public obligation, the respondent No.2 was duty bound to supply electricity, as laid down under Section 22 read with Section 12 of the said Act. Learned counsel appearing on behalf of the respondent Nos.3 and 4

submitted that the petitioner had no right to seek access through his property for the purpose of laying down electricity connection. He submitted that neither the respondent Nos.1 and 2 nor the present petitioner could compel the respondent Nos.3 and 4 to give consent for the purpose of laying electricity cables beneath the surface of his property. He submitted that the decree which was passed by the City Civil Court was restricted only to granting access to the petitioner to reach to his plot and no further concession was granted by the respondent Nos.3 and 4 by the said consent decree which was passed by the City Civil Court. Learned counsel for the respondent Nos.3 and 4 therefore submitted that the licensee did not have any authority to lay down electricity cable, as laid down under Section 12 of the said Act, without consent, since he continued to be the owner of the land though the right of access was granted to the petitioner. He further submitted that the present petition was not maintainable and the petitioner was seeking writ of mandamus and direction against the respondent No.2 which was a private limited company registered under the Companies Act, and therefore, no writ could be issued against such a company.

5. Sofar as the first objection raised by learned

counsel appearing for the respondent Nos.3 and 4 regarding maintainability of the writ petition against the respondent No.2 is concerned, we are unable to accept the submissions made by learned counsel appearing for the respondent Nos.3 and 4.

6. The Supreme Court in **U.P.State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey and Ors.,** reported in AIR 1999 SC 753 and further in the case of **Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust and Ors. v. V.R.Rudani and Ors.,** reported in AIR 1989 SC 1607 has taken a consistent view that the term "any person or authority" used in Article 226 of the Constitution of India must receive a liberal meaning unlike the term "State" in Article 12. The Supreme Court in a case of **Anadi Mukta Sadguru's case (supra)**, while considering the words "any person or authority", has observed that these words are not confined only to statutory authorities and instrumentalities of the State as they may cover any other person or body performing public duty. The Supreme Court has further observed in the said judgment that what is to be seen and is relevant is the nature of the duty imposed on the body and that the duty must be judged in the light of positive obligation owed by the person or authority

to the affected party. Similarly, the Supreme Court in the case of **U.P.State Co-operative Land Development Bank Ltd.'s case (supra)** has in paragraph 22 has observed as under:-

> "The language of Article 226 does not admit of any limitation on the powers of High Court for the exercise of jurisdiction thereunder though by various decisions of this Court with varying and divergent views it has been held that jurisdiction under Article 226 can be exercised only when body or authority, decision of which is complained, was exercising its power in the discharge of public duty and that writ is a public law remedy."

In view of the said ratio laid down by the Supreme Court, it has to be held that the respondent No.2 though is a company incorporated under the Companies Act, is under a statutory and public obligation to supply electricity to the consumers and occupiers within the area of its operation and in view of the statutory and public obligation, which is cast on the respondent No.2, it is amenable to the writ jurisdiction under Article 226 of the Constitution of

India.

7. So far as the second contention of the petitioner is concerned, in order to appreciate the submissions made by the petitioner, it would be relevant to take into consideration the relevant provision i.e. Section 22 of the Indian Electricity Act, 1910, which reads as under:-

> "Obligation on licensee to supply energy.- Where energy is supplied by a licensee, every person within the area of supply shall, except in so far as is otherwise provided by the terms and conditions of the license, be entitled, on application, to a supply on the same terms as those on which any other person in the same area is entitled in similar circumstances to a corresponding supply:
>
> Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of energy for any premises having a separate supply unless he has agreed with the licensee to pay to him such minimum annual sum as will give him a reasonable

> return on the capital expenditure, and will cover other standing charges incurred by him in order to meet the possible maximum demand for those premises, the sum payable to be determined in case of difference or dispute by arbitration."

From the perusal of the above provision, it can be seen that the obligation is cast on the licensee to supply energy to every person within the area of supply which is restricted by the terms and conditions of the license. Section 12 of the said Act provides for opening and breaking up of streets, railways and tramways for the purpose of supplying electricity to the consumers. Sub-section (2) thereof states that the licensee will be authorised to act provided under sub-section (1) of Section 12 of the said Act can be carried only with the consent of the local authority or of the owner or occupier is concerned. Sub-section (2) of Section 12 of the said Act reads as under:-

> "(2) Nothing contained in sub-section (1) shall be deemed to authorise or empower a licensee, without the consent of the local authority or of the owner or occupier concerned, as the case may be, to lay down or

place any electric supply-line, or other work in, through or against any building, or on, over or under any land not dedicated to public use whereon, or whereunder any electric supply-line or work has not already been lawfully laid down or placed by such licensee;

Provided that any support of an overhead line or any stay or strut required for the sole purpose of securing in position any support of an overhead line may be fixed on any building or land or, having been so fixed, may be altered, notwithstanding the objection of owner or occupier of such building or land, if the District Magistrate or, in a Presidency-town, the Commissioner of Police by order in writing so directs:

Provided also, that if at any time the owner or occupier of any building or land on which any such support, stay or strut has been fixed shows sufficient cause, the District Magistrate or, in Presidency-town, the Commissioner of Police may by order in writing direct any such support, stay or strut to be removed or altered."

If both the sections i.e. Sections 22 and 12 are read together, it can be seen that the obligation is cast on the licensee to provide electricity supply to the consumers and for the said purpose, the licensee is authorised to lay down or place any electric supply line and other work and for that purpose, he is authorised to open and break up the soil and pavement of any street, railway or tramway, etc. However, this power is restricted by virtue of sub-section (2) of the said section 12, which in no uncertain terms lays down that this cannot be done without the consent of the local authority or owner or occupier concerned, except in case where there is already an electric supply line or work which has been lawfully laid down or placed by such licensee. Further the proviso to sub-section (2) authorises the licensee in case permission is not granted by the owner to approach the District Magistrate in the Presidency-town or the Commissioner of Police and obtain an order in writing, notwithstanding the objection raised by the owner or the occupier. From the facts of the present case, it is abundantly clear that the respondent Nos.3 and 4, who were the owners of the access road, have objected to lay down of the electricity supply line below the access road. Further, there is no evidence on record

to indicate that the electricity connections have reached near the plot of land of the petitioner. However, merely because the owner of the plot, to whom access is granted, has not granted the consent or permission to the licensee, i.e. respondent No.1, the statutory and public obligation cast on respondent No.1 under the Act does not come to an end. The proviso to sub-section (2) of Section 12 contemplates such situation and provides the course of action which is required to be taken by the licensee. In our view, the licensee therefore cannot fold his hand and refuse to comply with the statutory and public obligation which is cast on him under Section 22 read with Section 12 of the said Act. The petitioner admittedly has been residing in the said plot for a considerable long period of time. He has otherwise fulfilled and complied with all other terms and conditions, as envisaged under Section 22 of the said Act, and therefore, there cannot be any impediment for providing electricity supply to the petitioner after following the procedure which is laid down under the proviso to sub-section (2) of Section 12 of the said Act.

8. We are of the view, therefore, that the petitioner is entitled for the relief asked in the

petition and accordingly the writ petition is allowed. The respondent Nos.1 and 2 are directed to follow the procedure laid down under the proviso to Section 12(2) of the said Act and approach the District Magistrate and/or Commissioner of Police, and after hearing the objections of the owner or the other occupier, if any, take appropriate orders from the District Magistrate and complete the task of supplying electricity line to the petitioner. The respondent Nos.1 and 2 are further directed to forthwith apply to the District Magistrate as expeditiously as possible, and in any case within a period of eight weeks from today, and upon such application being made, it is expected that the District Magistrate shall expeditiously decide such application after hearing the objections of the owner and/or other occupiers or interested parties, if any, who are likely to be affected by any such order which may be passed by the District Magistrate and decide the same within a period of eight weeks thereafter. It is clarified that the petitioner would be bound by the terms and conditions which may be imposed by the respondent Nos.1 and 2, as laid down under the Act, rules and regulations framed thereunder for the purpose of of paying the deposit and/or other fee which can be lawfully collected by the respondents from the petitioner.

9. The rule is made absolute in above terms with no order as to costs.

(R.M.S.KHANDEPARKAR, J)

(V.M.KANADE, J)